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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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12 ADDISON NAVONE, LLC, ) CV 18-9170-RSWL-MAA  
13 Plaintiff, )  
14 )  
15 v. ) ORDER re: Defendant's  
16 TRAVELERS PROPERTY CASUALTY ) Motion to Dismiss the  
17 COMPANY OF AMERICA, ) Third and Fourth Causes  
18 Defendant. ) of Action [10]  
19 )  
20 )  
21 )

22 Currently before the Court is Defendant Travelers  
23 Property Casualty Company of America's ("Defendant")  
24 Motion to Dismiss the Third and Fourth Causes of Action  
25 [10]. Having reviewed all papers submitted pertaining  
26 to this Motion, the Court **NOW FINDS AND RULES AS**  
27 **FOLLOWS:** the Court **DENIES in part and GRANTS in part**  
28 Defendant's Motion **WITH LEAVE TO AMEND.**

## I. BACKGROUND

### A. Factual Background

Plaintiff Addison Navone, LLC ("Plaintiff") owns a commercial warehouse property (the "Property") in Stockton, California. Notice of Removal, Ex. 2, Compl. ¶ 12, ECF No. 1-2. On or about November 11, 2014, Plaintiff purchased insurance policy number 680-786Y8178 ("the Policy") from Defendant covering the period from January 1, 2015, to January 1, 2016. Id. ¶ 13. Plaintiff renewed the Policy on or about November 23, 2015, to cover the period from January 1, 2016, to January 1, 2017. Id. ¶ 14. In 2016, Plaintiff leased the Property to HD Supply Construction Supply, Ltd. ("HD Supply"). Id. ¶ 18.

Plaintiff alleges that under the Policy, Defendant had an obligation to indemnify Plaintiff for any claim that was covered by the Policy. Id. ¶ 19. Section A of the Policy titled "Businessowners Property Coverage" provides that Defendant "will pay for direct physical loss of or damage to [the Property] caused by or resulting from a Covered Cause of Loss." Id. ¶ 20. Covered losses include any kind of loss unless limited or excluded by the Policy. Id. Section I of the section titled "Commercial General Liability" provides that Defendant "will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage.'" Id. ¶ 21.

1 On or about September 28, 2016, a portion of the  
2 roof on the Property caved in and a roof truss broke.  
3 Id. ¶ 22. Plaintiff filed a claim with Defendant under  
4 the Policy the following day. Id. ¶ 23. Plaintiff  
5 alleges that a covered peril under the Policy was the  
6 proximate cause of Plaintiff's loss, and because no  
7 Policy exclusions apply, Defendant owes coverage for  
8 all damages and indemnification associated with the  
9 roof incident. Id. ¶ 24.

10 Plaintiff alleges that Defendant failed and refused  
11 to conduct a prompt, full, and complete investigation  
12 and then denied Plaintiff's claim on December 14, 2016.  
13 Id. ¶¶ 26-27. In its denial letter, Defendant said the  
14 claim fell within exclusions to the Policy, but  
15 Plaintiff alleges that Defendant provided no further  
16 explanation. Id. ¶ 27.

17 HD Supply had to use alternative space to store its  
18 goods and withheld rent from Plaintiff during the time  
19 the roof was damaged. Id. ¶ 28. Plaintiff alleges the  
20 repair was delayed because it had to wait several  
21 months for a decision from Defendant. Id. Plaintiff  
22 alleges that as a result of Defendant's actions,  
23 Plaintiff has suffered a loss of hundreds of thousands  
24 of dollars. Id. ¶ 30.

25 **B. Procedural Background**

26 Plaintiff filed its Complaint [1-2] in Los Angeles  
27 Superior Court on September 21, 2018 for breach of  
28 contract, bad faith, intentional interference of

1 contract, and intentional interference of prospective  
2 economic advantage. Notice of Removal ¶ 1, ECF No. 1.  
3 This Action was removed [1] to this Court by diversity  
4 jurisdiction on October 25, 2018. Defendant filed the  
5 instant Motion [10] on November 15, 2018. The Court  
6 granted the parties' stipulation to continue the  
7 hearing on the Motion from December 18, 2018, to  
8 February 19, 2019 [14]. The Court ordered further  
9 briefing to be submitted on the new schedule based on  
10 the February 19, 2019 hearing date. The Court approved  
11 the parties' second stipulation to continue the hearing  
12 on the Motion from February 19, 2019, to March 19, 2019  
13 [19]. Plaintiff filed its Opposition [20] on February  
14 26, 2019. Defendant filed its Reply [21] on March 5,  
15 2019.

## 16 II. DISCUSSION

### 17 A. Legal Standard

18 Federal Rule of Civil Procedure 12(b)(6) allows a  
19 party to move for dismissal of one or more claims if  
20 the pleading fails to state a claim upon which relief  
21 can be granted. A complaint must contain sufficient  
22 facts, accepted as true, to state a plausible claim for  
23 relief. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)  
24 (quotation omitted). Dismissal is warranted for a  
25 "lack of a cognizable legal theory or the absence of  
26 sufficient facts alleged under a cognizable legal  
27 theory." Balistreri v. Pacifica Police Dep't, 901 F.2d  
28 696, 699 (9th Cir. 1988) (citation omitted).

1 "In ruling on a 12(b)(6) motion, a court may  
2 generally consider only allegations contained in the  
3 pleadings, exhibits attached to the complaint, and  
4 matters properly subject to judicial notice." Swartz  
5 v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007)  
6 (citation omitted). A court must presume all factual  
7 allegations to be true and draw all reasonable  
8 inferences in favor of the non-moving party. Klarfeld  
9 v. United States, 944 F.2d 583, 585 (9th Cir. 1991).  
10 The question is not whether the plaintiff will  
11 ultimately prevail, but whether the plaintiff is  
12 entitled to present evidence to support the claims.  
13 Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 184  
14 (2005) (quoting Scheuer v. Rhodes, 416 U.S. 232, 236  
15 (1974)). While a complaint need not contain detailed  
16 factual allegations, a plaintiff must provide more than  
17 "labels and conclusions" or "a formulaic recitation of  
18 the elements of a cause of action." Bell Atl. Corp. v.  
19 Twombly, 550 U.S. 544, 555 (2007). However, a  
20 complaint "should not be dismissed under Rule 12(b)(6)  
21 'unless it appears beyond doubt that the plaintiff can  
22 prove no set of facts in support of his claim which  
23 would entitle him to relief.'" Balistreri, 901 F.2d at  
24 699 (citing Conley v. Gibson, 355 U.S. 41, 45-46  
25 (1957)).

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1 **B. Discussion**

2 1. Intentional Interference of Contract

3 The elements of an intentional interference of  
4 contract under California law require: "(1) a valid  
5 contract between plaintiff and a third party; (2)  
6 defendant's knowledge of this contract; (3) defendant's  
7 intentional acts designed to induce a breach or  
8 disruption of the contractual relationship; (4) actual  
9 breach or disruption of the contractual relationship;  
10 and (5) resulting damage." Quelimane Co. v. Stewart  
11 Title Guaranty Co., 960 P.2d 513, 530 (Cal. 1998).

12 At issue here is the third element—the intent  
13 requirement. Defendant argues that Plaintiff's  
14 Complaint as a whole alleges that Defendant's intent  
15 was to enrich itself by denying coverage of the roof  
16 damage, and not to interfere with Plaintiff's lease  
17 agreement. Mot. at 6:10-19. However, a specific  
18 intent to interfere is not required to properly plead  
19 this claim. Quelimane, 960 P.2d at 531 ("[T]he tort of  
20 intentional interference with performance of a contract  
21 does not require that the actor's primary purpose be  
22 disruption of the contract."). A claim is viable where  
23 the actor "knows that the interference is certain or  
24 substantially certain to occur as a result of his  
25 action." Id. (quoting Restatement (2d) of Torts § 766,  
26 cmt. j).

27 Plaintiff alleges that Defendant "intended or knew  
28 that a breach or disruption" of Plaintiff's contract

1 with HD Supply "was certain or substantially certain to  
2 occur" as a result of Defendant's improper denial of  
3 coverage. Compl. ¶ 52. Specifically, Plaintiff  
4 alleges that it had a contract with HD Supply at the  
5 time of the roof collapse, that Defendant knew of this  
6 contract, and that Defendant knew that tenants like HD  
7 Supply stored their goods at the Property. Id. ¶¶ 50-  
8 51. As a result of Defendant's delay in processing  
9 Plaintiff's claim and subsequent denial of coverage,  
10 Plaintiff alleges that there was a delay in repair of  
11 the roof and that HD Supply withheld rent for having to  
12 use an alternative space to store its goods. Id. ¶¶  
13 28, 53. Plaintiff alleges that Defendant, as an  
14 insurer, knew that delaying investigation of the  
15 insurance claim would interfere with Plaintiff's  
16 contract with HD Supply. Id. ¶¶ 51-54. Finally,  
17 Plaintiff alleges it suffered hundreds of thousands of  
18 dollars in damages as a result. Id. ¶ 54.

19 At this stage, these allegations are sufficient for  
20 a claim of intentional interference of contract and the  
21 Court **DENIES** Defendant's Motion to Dismiss as to  
22 Plaintiff's intentional interference of contract claim.

23 2. Intentional Interference of Prospective  
24 Economic Advantage

25 The elements of intentional interference of  
26 prospective economic advantage under California law  
27 require:  
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1 (1) an economic relationship between the  
2 plaintiff and some third party, with the  
3 probability of future economic benefit to the  
4 plaintiff; (2) the defendant's knowledge of the  
5 relationship; (3) intentional acts on the part  
6 of the defendant designed to disrupt the  
7 relationship; (4) actual disruption of the  
8 relationship; and (5) economic harm to the  
9 plaintiff proximately caused by the acts of the  
10 defendant.

11 Korea Supply Co. v. Lockheed Martin Corp., 63 P.3d 937,  
12 950 (Cal. 2003) (citations omitted).

13 The parties dispute whether Plaintiff's allegations  
14 satisfy the third element, which requires "(1) that the  
15 defendant engaged in an independently wrongful act, and  
16 (2) that the defendant acted either with the desire to  
17 interfere or the knowledge that interference was  
18 certain or substantially certain to occur as a result  
19 of its action." Id. at 958. An independently wrongful  
20 act is defined as an unlawful act. Id. at 953-54 ("We  
21 conclude, therefore, that an act is independently  
22 wrongful if it is unlawful, that is, if it is  
23 proscribed by some constitutional, statutory,  
24 regulatory, common law, or other determinable legal  
25 standard."). Plaintiff need only plead at least one  
26 claim that survives as independently wrongful to  
27 survive the motion to dismiss stage. Packaging Sys.,  
28 Inc. v. PRC-Desoto Int'l, Inc., 286 F. Supp. 3d 1071  
1091 (C.D. Cal. 2017).

Here, Plaintiff alleges that Defendant engaged in  
wrongful conduct and acted in bad faith by failing to  
provide coverage under the Policy. Compl. ¶ 60. In



1 other words, Plaintiff alleges that Defendant's breach  
2 of contract and breach of implied covenant of good  
3 faith constitute wrongful conduct. Id. However,  
4 "California law does not recognize a breach of contract  
5 as a 'wrongful act' predicate required for this claim."  
6 MJC America, Ltd. v. Gree Elec. Appliances, Inc. Of  
7 Zhuhai, No. CV 13-04264 SJO (CWx), 2014 WL 12597149, at  
8 \*6 (C.D. Cal. Aug. 13, 2014). California law also does  
9 not recognize breach of the covenant of good faith and  
10 fair dealing as wrongful conduct. Id. (holding that a  
11 breach of covenant of good faith does not qualify as  
12 wrongful conduct in cases where the covenant is merely  
13 an implied term and not a special fiduciary  
14 relationship). Here, Plaintiff pleads an implied  
15 covenant of good faith and not a special fiduciary  
16 relationship between Plaintiff and Defendant. See  
17 Compl. ¶¶ 39-48.

18 Because Plaintiff fails to plead independently  
19 wrongful conduct outside of the alleged interference,  
20 the Court **GRANTS** Defendant's Motion to Dismiss as to  
21 Plaintiff's interference with prospective economic  
22 advantage claim.

23 3. Leave to Amend

24 A plaintiff may amend the complaint once "as a  
25 matter of course" before a responsive pleading is  
26 served. Fed. R. Civ. P. 15(a). After that, the "party  
27 may amend the party's pleading only by leave of court  
28 or by written consent of the adverse party and leave

1 shall be freely given when justice so requires." Id.  
2 "Rule 15's policy of favoring amendments to pleadings  
3 should be applied with 'extreme liberality.'" United  
4 States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981)  
5 (internal quotations and citation omitted). Here,  
6 Plaintiff has not previously amended its Complaint,  
7 even prior to its removal. Because the biggest issue  
8 with Plaintiff's allegation is the lack of  
9 independently wrongful conduct, there is a chance that  
10 amendment will cure this deficiency and the Court  
11 **GRANTS LEAVE TO AMEND** with respect to Plaintiff's claim  
12 for interference with prospective economic advantage.

### 13 **III. CONCLUSION**

14 Based on the foregoing, the Court (1) **DENIES**  
15 Defendant's Motion as to Plaintiff's third claim for  
16 intentional interference of contract; and (2) **GRANTS**  
17 **WITH 21 DAYS LEAVE TO AMEND** Defendant's Motion as to  
18 Plaintiff's fourth claim for intentional interference  
19 of prospective economic advantage.

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21 **IT IS SO ORDERED.**

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23 DATED: April 16, 2019

s/ RONALD S.W. LEW

24 **HONORABLE RONALD S.W. LEW**  
25 Senior U.S. District Judge  
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